IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.5895 of 1994

Between:

Smt. Pyari Jahan, widow of late Momin AliKhan, Ex-Serviceman, resident of Government Quarter No.10-1-80, A.C. Guard, Masab Lines, Hyderabad.

..... PETITIONER

AND

The Estate Officer, Hyderabad and Secunderabad, Office at Lakdikapool, Hyderabad, Andhra Pradesh.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari, or any other appropriate Writ, order or direction, calling for the entire records in C.M.A.No.3 of 1993 and quash the judgment and decree dated 02.11.1993 passed by the Chief Judge, City Civil Court, Hyderabad and consequently to set aside the order in Case No.81/4342/85, dated 16.01.1993 on the file of the Respondent.

Counsel for the Petitioner: MR.KHADER ALI KHAN

Counsel for the Respondent: GP FOR GENERAL ADMINISTRATION

The Court made the following :

ORDER:

This writ petition is filed seeking a Writ of Certiorari calling for the entire records in CMA No. 3 of 1993 and quash the judgment and decree dated 02.11.1993 passed by the Chief Judge, City Civil Court, Hyderabad and consequently set aside the order in Case No.81/4342/85, dated 16.01.1993 on the file of the Respondent-Estate Officer.

The brief facts of the affidavit filed in support of the writ petition are that the husband of the writ petitioner by name Momin Ali Khan was allotted quarter No.10-1-80 at Masab Lines, Hyderabad in the year 1951 and since then herself, her husband and her son-in-law namely M.Abdul Razaak have been in continuous possession of the same by paying necessary rents as per the rental agreement. Her husband died in March, 1984. While so, the respondent issued eviction proceedings under Lr.No.B1-/4342/85, dated 02.01.1991. Aggrieved by the same, she filed an objection petition in Case No.B1/4342/1991, dated 4.1.1991, but without considering the documentary and oral evidence and without giving any opportunity of being heard, eviction order in Lr.No.B1/4342/85, dated 16.01.1993 was passed against her. Aggrieved by the said order she preferred appeal in CMA No.3 of 1993 on the file of the Chief Judge, City Civil Court, Hyderabad, which was also dismissed on 02.11.1993. Hence she filed the present writ petition.

Counter-affidavit is not filed till date. While admitting the writ petition, interim injunction was granted by this court on 24.06.1994 in W.P.M.P. No.7189 of 1994,

and by virtue of the said order, the petitioner has been continuously enjoying the possession of the property. This Court on 27.07.2004 directed the respondent-Estate Officer to appear before this Court in person and explain the reasons for not filing the counter. It is only then, the respondent-Estate Officer filed a counter-affidavit and appeared before the Court.

The counter-affidavit reveals that the petitioner earlier filed Writ Petition No.14322 of 1988, which was dismissed by this Court, on 06.08.1999 and subsequently challenging the said orders the petitioner also filed Writ Appeal No.1182 of 1990, which was dismissed by a Division Bench of this Court. The Division Bench of this Court while dismissing the Writ Appeal granted six weeks time to the petitioner to vacate the premises and hand over vacant possession thereof to the concerned authorities, failing which appropriate action be taken for taking recovery of the premises.

It is surprising to note that even though the Division Bench of this Court while dismissing the writ appeal directed the petitioner to vacate the premises within six weeks and hand over vacant possession thereof to the officers concerned, the respondent-Estate Officer, even after expiry of the said period, has not chosen to evict the petitioner nor taken any action for his eviction. It is also surprising to note that though the petitioner has filed the present writ petition and obtained interim injunction, concealing the fact of her filing writ petition and writ appeal on earlier occasion, which ended in dismissal, no counter or vacate stay petition has been filed, seek to set aside the same. The petitioner having filed the writ petition in the year 1994 obtained interim injunction on 24.06.1994 and taking advantage of the callous attitude on the part of the respondents, who neither filed counter nor vacate stay petition, in the guise of interim injunction, has been in continuous possession for more than ten years.

I am unable to understand as to why the Estate Officer has not taken any steps to evict the petitioner or to collect the money in pursuance of the orders of the Writ Appeal, nor file counter for all these days. The conduct of the respondents in not filing counter-affidavit in the writ petition for all these days shows that they colluded with the petitioner and denied the genuine and need persons from enjoying the quarters.

The petitioner has already exhausted all the remedies available to her under

law, and this Court also passed final orders in the Writ Appeal No. 1182 of 1990. Hence, the matter has attained the finality and petitioner is not entitled to raise the same issue by way of filing another writ petition, which is nothing but abusing the process of law.

In the circumstances, the writ petition fails and liable to be dismissed. Accordingly, the writ petition is dismissed. Having regard to the facts and circumstances of the case, it is a fit case, where the matter has to be enquired into and appropriate disciplinary action initiated against the officials concerned, for not obeying the orders of this Court and in not taking appropriate steps for eviction of the petitioner. Hence, the Principal Secretary, General Administration Department is directed to conduct an enquiry and take appropriate disciplinary action against the officers concerned who are responsible for not taking steps for eviction of the petitioner in terms of the order in writ appeal and not filing counter in the present writ petition in time and thus allowing the petitioner to continue illegally in the quarter. No costs.

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(N.V. RAMANA, J)

Date: 03.08.2004

Nsr/Ksr

To

1. The Principal Secretary to the Government of A.P., General

Administration Department, Secretariat, Hyderabad (for taking necessary action)

2. The Estate Officer, Hyderabad and Secunderabad, Office at Lakdikapool, Hyderabad, Andhra Pradesh.

3. Two CCs to GP for General Administration Department, High Court of AP, Hyderabad (OUT)

4. Two CD copies.